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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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June 22, 1998

VIA HAND DELIVERY

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL

Re: Reply Comments of the Washington State Department of Information
Services regarding CC Docket No. 96-45

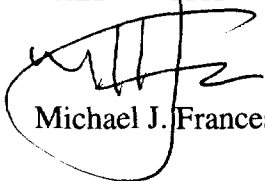
Gentlemen/Ladies:

On behalf of Washington State Department of Information Services et al., we are filing herewith an original and four copies of Reply Comments of the Washington State Department of Information Services in the Universal Service proceeding, CC Docket No. 96-45.

Please contact this office if further information is needed.

Sincerely,

REED SMITH SHAW & McCLAY LLP


Michael J. Francesconi

Enclosures

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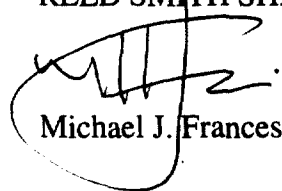
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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington D.C. 20554**

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**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY**

In the Matter of
Federal-State Joint Board on
Universal Service

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CC Docket 96-45
DA 98-977

**Reply Comments of The Washington State
Department of Information Services**

The Washington State Department of Information Services (DIS) submits these Reply Comments in support of the Florida Department of Management Services' (DMS') "Motion for Declaratory Ruling, or in the Alternative, Petition for Waiver of Existing Contracts Rule," filed May 11, 1998, in the above-captioned proceeding. DIS and other Washington State agencies, universities, community colleges, libraries, and K-12 schools would be harmed severely if the School and Libraries Corporation (SLC) were to interpret the Commission rules as making services procured under contract renewal options ineligible for Universal Service Fund discounts. For this reason, DIS strongly supports DMS' motion and endorses the positions set forth in the Comments of the National Association of State Telecommunications Directors (NASTD).¹

DIS is a cabinet-level state agency that provides telecommunications and computing services to public governmental and educational entities throughout Washington State. DIS is the lead agency on the state's new K-20 Educational Telecommunications Network, a \$61 million network project linking universities,

¹ See Comment in Support by the National Association of State Telecommunications Directors, submitted June 11, 1998.

colleges, K-12 schools and libraries. On behalf of the K-12 schools and libraries participating in this project, DIS has prepared and filed applications for Universal Service Fund "E-rate" discounts for eligible components of this backbone network as well as for other services DIS provides to schools and libraries through consortia agreements.

DIS and other public entities in Washington routinely provide for renewal at their option in their contracts for telecommunications services. Not only are these renewal options not prohibited by state law,² they are a common business practice which serves the public interest by allowing taxpayer-supported entities flexibility in responding to changes in marketplace conditions that may affect costs and services. Such terms are negotiated and voluntarily agreed to by both the public entity and the service provider, and are a factor in determining the prices obtained for services under the initial contract. These renewal options lower the state's costs considerably by (1) allowing a public entity to terminate a contract at the end of its initial period if it is in the public entity's best interest, and (2) avoiding the need to re-bid where the market price is higher than that to which the service provider has already committed. In many cases, such options are necessary to avoid committing legislative appropriations for future biennia.

In preparing its applications for E-rate discounts, DIS was guided by the SLC's February 24, 1998, Fact Sheet on Master Contracts. The SLC stated at that time that "the same rules that govern pre-existing contracts also govern master contracts." While the SLC acknowledged that 47 C.F.R. § 54.18(d) "expressly excludes voluntary extensions

² See *Savage v. State*, 75 Wash. 2d 618, 621-22 (1969) ("[T]he duration of a contract is as much a term of agreement as is price, description of the subject matter, and the myriad other provisions which may be properly included in the purchase contract. These essential terms must be left to the determination of the administrative agency invested with this government responsibility.").

from the competitive bidding exemption for pre-existing contracts,” it also clearly defined a “voluntary extension” as an *amendment* to a contract. The SLC said:

A voluntary extension is an amendment which enables the contracting party to choose unilaterally whether to lengthen the term of the contract beyond the termination date prescribed in the existing contract. In other words, the extension is completely at the option of the contracting party who has no contractual penalties for not exercising the option.

This position recognizes, as DIS does, that parties cannot avoid competitive bidding requirements by subsequently amending existing contract provisions and extending their duration.

The SLC position as communicated to the Florida DMS apparently confuses contract renewal options negotiated *at the time* of the initial contract with those negotiated *after* effective date of the initial contract. If this is indeed the SLC’s new position, it is clearly at odds with the language and intent of 47 C.F.R. § 54.18(d) as well as the previous instruction from the SLC on which DIS and other applicants relied in completing its applications.

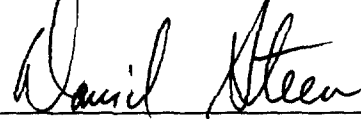
There are certainly no policy reasons to require state telecommunications networks to forego the benefits of pre-existing contract renewal provisions. To the contrary, because these options generally result in significant savings to taxpayers, they are appropriate and prudent business practices that neither the Commission nor the SLC should discourage. Moreover, because these provisions lead to lower costs during the renewal periods, they will generally result in reduced demand on the universal service fund itself, as E-rate discounts are based on a percentage of the contract price.

DIS requests that the Commission grant DMS’ motion for declaratory ruling and

clarify its intent in promulgating 47 C.F.R. § 54.18(d) with regard to both pre-existing contracts and master contracts.

Respectfully submitted,

**WASHINGTON STATE DEPARTMENT
OF INFORMATION SERVICES**

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June 22, 1998